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No. 91-873

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1991

MARTIN RYAN, BERNARD MCKAY, JOSEPH COGLIANESE, LOUIS EISEN, BERNARD HOGAN, PATRICIA DARCY, SYLVIA WALSH and KATHERINE DOYLE, Class Representatives of the December 31, 1987 participants in the City's Annuitant Healthcare Program,

*Petitioners*,

v.

CITY OF CHICAGO, a Municipal Corporation, and MARSHALL KORSHAK, RUSSELL EWERT, ODELL HICKS, THOMAS D. ALLISON, FRED W. SETTLES, CECIL A. PARTEE, CHESTER JASKOLKA, RONALD R. NORRIS and

[Respondents Continued on Inside Cover]

**On Petition for a Writ of Certiorari to the Supreme Court of Illinois**

## BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION

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JAMES MCDONOUGH, in their capacity as the Board members of the Policemen's Annuity & Benefit Fund for cities over 500,000; MICHAEL A. COHEN, NORMAN S. HOLLAND, ANN FOLEY, JAMES R. CONMEY, WALTER S. KOZUBOWSKI, RONALD D. PICUR, RONALD MALONEY, and CECIL A. PARTEE, in their capacity as the Board members of the Firemen's Annuity & Benefit Fund for Cities over 500,000; WILLIAM J. MCMAHON, RONALD D. PICUR, CECIL A. PARTEE, WAYNE N. MARSHALL, and EDWARD J. LAIRD, in their capacity as the Board members of the Municipal Employees' Annuity & Benefit fund for Cities over 500,000; ROGER E. MCMAHON, RONALD D. PICUR, CARMEN IACULLO, and CECIL A. PARTEE, in their capacity as the Board members of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund for Cities over 500,000,

*Respondents.*

## QUESTION PRESENTED

Whether a state-law rule of privity that binds pension fund beneficiaries to a court-approved settlement between the fund trustees and the City violates the Constitution.

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*Respondents.*

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**On Petition for a Writ of Certiorari to the Supreme Court of Illinois**

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## BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION

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### OPINIONS BELOW

The opinion of the Illinois Appellate Court is reported at 206 Ill. App. 3d 968, 565 N.E. 2d 68 (1990), and is reprinted at Pet. App. 48-64.

The opinion and order of the Circuit Court of Cook County, Illinois, have not been reported. They are reprinted at Pet. App. 1-47.

### STATEMENT

This case arises from litigation between the City of Chicago and its four employee pension funds over the amount of money the City contributes to the health care costs of retirees who participate in those funds. The case originally involved only the City and the pension funds, and concerned their dispute over the extent to which the City was obligated to contribute to pensioners' health care costs in excess of the contributions specified in pertinent Illinois statutes. C. 2, 24.[1] Petitioners in this Court are the representatives of a class of intervening beneficiaries of the funds who objected to the settlement between the City and the funds, by which the parties sought and obtained legislation requiring the City to bear at least 50% of the cost of retirees' health care. C. 12, 251-57, 341-54, 1518. The trial court held a fairness hearing, concluded that the settlement was fair, and approved it over the objections of petitioners. Tr. of Nov. 22, 1989; C. 3481.

The Illinois Appellate Court affirmed, concluding that the settlement was fair and that the trial court had properly approved it over the objections of the inter-

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[1] "C." is the designation for the common law record of this case.

venors. *See City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 565 N.E. 2d 68 (1990) (Pet. App. 48-64). That court subsequently denied petitioners' petition for rehearing as well as a motion for a stay of the mandate. The Supreme Court of Illinois then denied petitioners' petition for leave to appeal.

Petitioners now seek review of the decision of the Illinois Appellate Court permitting the City of Chicago to implement the settlement agreement.[2] Justice Stevens and Justice Blackmun both denied petitioners' applications for stay pending disposition of the petition for certiorari, permitting the settlement to be implemented as of January 1, 1992.

## ARGUMENT

### THE RULE THAT TRUST BENEFICIARIES ARE BOUND BY THEIR TRUSTEES' DECISION TO SETTLE A CASE INVOLVING TRUST ASSETS ONCE THAT SETTLEMENT IS FOUND TO BE FAIR BY A COURT OF COMPETENT JURISDICTION DOES NOT OFFEND THE CONSTITUTION.

This Court's jurisdiction over judgments of state courts is, of course, limited to questions of federal law. See 28 U.S.C. § 1257. Even a cursory perusal of the opinion of the Illinois Appellate Court in this case (Pet. App. 48-64) makes clear that that court decided no question of federal law. The court held only that the trial court had appropriately found the settlement to be fair, and approved it over the objection of petitioners. That is solely a question of state law. Although petitioners claim that the settlement cannot constitutionally be approved over their objection, that question is neither preserved for this Court's review nor of any particular importance or difficulty. The petition should therefore be denied.

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[2] The petition is incorrectly styled as directed to the Supreme Court of Illinois. That court declined to review the decision of the appellate court.

1. As a threshold matter, the question whether, as a matter of federal law, the circuit court's judgment in this case can appropriately bind intervenors is not preserved for this Court's review. In the trial court, petitioners never objected to the circuit court's ruling that it would enter judgment if it concluded after a fairness hearing that the settlement was fair. In fact, petitioners, along with the other parties, informed the trial court that they had agreed that the court need not decide the merits of the original claims in the case, and instead need only hold a fairness hearing that would conclude the litigation if the court approved the settlement. See C. 1518; Tr. of Sept. 29, 1989, at 4-8. It is settled law in Illinois that a litigant may not assert as error on appeal a procedure to which it not only failed to object in the trial court, but to which it in fact agreed. See, *e.g.*, *People ex rel. Hartigan v. Illinois Commerce Commission*, 117 Ill. 2d 120, 131, 510 N.E. 2d 865, 869 (1987); *E & E Hauling, Inc. v. Pollution Control Board*, 107 Ill. 2d 33, 38, 481 N.E. 2d 664, 666 (1985). Because petitioners failed to raise in the trial court any federal constitutional objection to being bound by their trustees' settlement, the appellate court did not reach this claim. As noted, the appellate court held only that notwithstanding petitioners' complaints, the settlement was fair. This decision thus stands on an adequate and independent state-law ground, and there is no basis for the exercise of this Court's jurisdiction. See *Michigan v. Long*, 463 U.S. 1032, 1038-41 (1983). See also *Harris v. Reed*, 489 U.S. 255, 265 n.12 (1989).

2. While petitioners claim that a settlement cannot be approved over the objection of an intervening party, petitioners do not address cases in which, as here, the original party is in privity with the intervenor, and the objecting class is certified only for purposes of testing the fairness of the proposed settlement. Petitioners do not even attempt to construct an argument that the Due Process Clause (or any other provision of the Constitution) pro-

hibits binding a trust beneficiary to a judgment concerning trust assets to which his trustee has consented, and after a court has independently scrutinized that judgment for fairness. The idea that trust beneficiaries are bound by the actions of their trustees within the scope of their reasonable business judgment is well established in Illinois law. See, *e.g.*, *Childs v. National Bank of Austin*, 658 F.2d 487, 494 (7th Cir. 1981) (applying Illinois law); *In re Moir Hotel Co.*, 186 F.2d 377, 381-82 (7th Cir. 1951) (same); *Continental Illinois National Bank & Trust Co. v. Sever*, 393 Ill. 81, 93, 65 N.E. 2d 385, 391 (1946). The petition does not forward any argument why this rule offends due process, nor does it cite any authority for that proposition. Indeed, the Illinois rule of privity is consistent with the generally accepted common law rule that trust beneficiaries are in privity with their trustees and bound by the decision of their trustees to settle litigation. See Restatement (Second) of Trusts §§ 187, 192 (1959).

3. It would be surprising, to say the least, if the well-settled rule of privity followed in Illinois offends due process. The only authorities petitioners cite construe the intervention provisions in federal law, and do not consider the matter as a question of due process; moreover, those cases involve parties with differing interests, and not privies. See, *e.g.*, *Local No. 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501 (1986).[3] Because trustees are charged with fiduciary responsibilities, it is reasonable to bind beneficiaries to their trustees' decisions to settle, especially when, as here, the beneficiaries are afforded the extra protection of in-

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[3] Petitioners' reliance on the *Firefighters* case is particularly curious, given the Court's square holding there that intervenors cannot veto a settlement: "While an intervenor is entitled to present evidence and have its objections heard at hearings on whether to approve a consent decree, it does not have the power to block the decree merely by withholding its consent." 478 U.S. at 529.

dependent judicial scrutiny regarding the fairness of the settlement. An objection by a small number of the total group of beneficiaries does not require rejection of the trustees' decision to settle, as both the trial and appellate courts in this case held.

4. Petitioners also contend that the decision here impaired their rights under the Contracts Clause, U.S. Const. Art. I, § 10, cl. 1. Once it is apparent, however, that this judgment was entered only as the result of the trustees' decision to settle and that their beneficiaries were appropriately bound under state-law privity rules, the asserted "impairment" of contractual rights proves illusory. No rule of Illinois law prevented the assertion of whatever contractual rights petioners or their trustees may have had. All that happened in this case was that the trustees, unsure what the outcome of the case would be if pressed to its conclusion, made a reasonable decision to settle. No state-law rule or governmental actor "impaired" any contractual rights; instead, the trustees voluntarily and reasonably compromised those claims. A trustee's reasonable decision to settle a contractual claim when faced with the risks of litigation works no impairment of contract. Petitioners cite no authority to the contrary, and acceptance of their position would mean that it would become not only impractical but in fact unconstitutional for trustees ever to settle contractually based claims of a trust if even a single trust beneficiary objects.

5. Petitioners have accordingly failed to demonstrate any justification for this Court's review. They have not even alleged, much less shown, the existence of a conflict in the lower courts, that this question is of general importance, or even that the procedures employed in this case depart from the rules generally followed regarding approval of settlements. There is accordingly no basis for review under this Court's Rules.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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February 14, 1992